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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|---------------------|------------------|
| 09/829,168 | 04/09/2001 | Allan J. Lepine | IAM 0498 NA | 1328 |
| 27752 | 7590 | 02/04/2005 | EXAMINER | |
| THE PROCTER & GAMBLE COMPANY INTELLECTUAL PROPERTY DIVISION WINTON HILL TECHNICAL CENTER - BOX 161 6110 CENTER HILL AVENUE CINCINNATI, OH 45224 | | | CORBIN, ARTHUR L | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 1761 | |
| DATE MAILED: 02/04/2005 | | | | |

Please find below and/or attached an Office communication concerning this application or proceeding.



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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/829,168
Filing Date: April 09, 2001
Appellant(s): LEPINE, ALLAN J.

MAILED
FEB 04 2005
GROUP 1700

For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed December 22, 2004.

(1) *Real Party in Interest*

A statement identifying the real party in interest is contained in the brief.

(2) *Related Appeals and Interferences*

A statement identifying the related appeals and interferences, which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

(3) Status of Claims

The statement of the status of the claims contained in the brief is correct.

(4) Status of Amendments After Final

No amendment after final has been filed.

(5) Summary of Invention

The summary of invention contained in the brief is correct.

(6) Issues

The appellant's statement of the issues in the brief is correct.

(8) Claims Appealed

The copy of the appealed claims contained in the Appendix to the brief is correct.

(9) Prior Art of Record

The following is a listing of the prior art of record relied upon in the rejection of claims under appeal.

| | | |
|-----------|--------------------------------------|--------|
| 5,709,888 | Gil et al | 1-1998 |
| 5,294,458 | Fujimori | 3-1994 |
| 0,259,713 | Meyer (EP, pages 3-4 of translation) | 3-1992 |

(10) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

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Claims 1 and 3-5 stand rejected under 35 U.S.C. 102(b)/103(a). This rejection is set forth in a prior Office Action, mailed on October 29, 2003, paragraph No. 3.

Claims 7-9, 11 and 12 stand rejected under 35 U.S.C. 103(a). This rejection is set forth in a prior Office Action, mailed on October 29, 2003, paragraph No. 4.

Claim 6 stands rejected under 35 U.S.C. 103(a). This rejection is set forth in a prior Office Action, mailed on October 29, 2003, paragraph No.5.

Claim 10 stands rejected under 35 U.S.C. 103(a). This rejection is set forth in a prior Office Action, mailed on October 29, 2003, paragraph No.6.

Claims 1 and 9 also stand rejected under 35 U.S.C. 103(a). This rejection is set forth in a prior Office Action, mailed on October 29, 2003, paragraph No.7.

Claims 3-5, 11 and 12 also stand rejected under 35 U.S.C. 103(a)). This rejection is set forth in a prior Office Action, mailed on October 29, 2003, paragraph No. 8.

Claim 6 also stands rejected under 35 U.S.C. 103(a). This rejection is set forth in a prior Office Action, mailed on October 29, 2003, paragraph No. 9.

Claim 10 also stands rejected under 35 U.S.C. 103(a). This rejection is set forth in a prior Office Action, mailed on October 29, 2003, paragraph No. 10.

(11) Response to Argument

Appellant's claims are equivalent to feeding a beagle pup its mother's milk since there is no patentable distinction between natural beagle milk and the claimed composition. Each component in the amount claimed by appellant is present in natural

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beagle milk. The manner of producing appellant's artificial milk has not been claimed and thus cannot be relied upon to distinguish over the prior art.

One of ordinary skill in this art would have been motivated to produce artificial beagle milk for the same reason that other artificial food products are produced, i.e. to meet demand if supply of the natural food product is short. Once this artificial milk is produced, it would have been obvious to include any beneficial additives, such as FOS. The FOS of Fujimori is an obvious additive to such milk since FOS improves intestinal health of puppies and reduces the odor of puppies' waste products.

Appellant's remarks regarding Meyer are not convincing. Whereas whey may include components other than protein, as appellant contends based upon page 4888 of the Encyclopedia of Food Science submitted by appellant, the protein itself is composed only of albumin and globulin substances. According to page 4889 of the Encyclopedia, the proteins present in whey are 50% beta lactoglobulin, 25% alpha lactalbumin and 25% other protein. However, the other proteins are composed of albumin and globulin as well, according to page 3, last full paragraph of the Meyer translation. Thus, the albumin-globulin portion of the ratio disclosed on page 4 of the Meyer translation accounts for all components of the whey protein. As a result, appellant's claimed weight ratio is disclosed by Meyer.

For the above reasons, it is believed that the rejections should be sustained.

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Respectfully submitted,

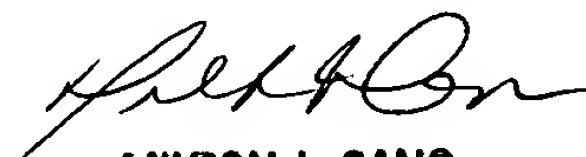
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2-1-05



MILTON I. CANO
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TECHNOLOGY CENTER 1700

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Arthur L. Corbin whose telephone number is (571) 272-1399. The examiner can normally be reached on Monday-Friday from 10:30 am to 8:00 pm.

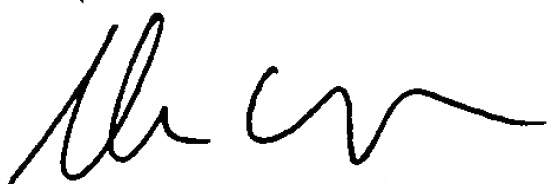
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano, can be reached on (571) 272-1398. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only.

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A. Corbin/dh
January 25, 2005



Glenn Caldarola
Supervisory Patent Examiner
Technology Center 1700